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ARIZONA WATER POLICY REVISITED

Prepared for The Arizona Policy Forum
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Introduction

It has been nearly 24 years since the Arizona Legislature enacted the 1980 Groundwater Management Act (GMA). Recognized nationally as a model for innovative groundwater management, the GMA's primary goal is to conserve groundwater in the state's most heavily populated urban areas. These areas, known as Active Management Areas or AMAs, include much of Maricopa, Pima and Yavapai counties.

In the AMAs, one of the most successful groundwater management tools is the requirement that developers demonstrate the availability of a long-term water supply for new residential growth. This requirement ensures that municipalities and homebuyers are protected from drought and overutitlization of water supplies.

> *"Water is Arizona's most important resource—the key to our future growth and prosperity. While we have made great strides towards resolving them, water issues will continue to be among our most difficult public policy questions during the remainder of the decade and beyond."*
>
> *Governor Bruce Babbitt, 1982*

While the GMA has profoundly and positively changed water management in the AMAs, it has had little if any impact on the rest of Arizona. The legislature chose to exclude most of rural Arizona from the GMA's provisions partly on the assumption that rural Arizona did not have the same water demands and projected growth as urban Arizona. This assumption is no longer valid. Many parts of rural Arizona are growing at extraordinary rates, placing substantial, increasing demands on water supplies.

It is now clear that, in addition to the short-term problems caused by the current drought, there are a number of communities outside of the AMAs that need tools to manage use of limited water supplies. Water for sustainable growth is a newsworthy topic in Arizona, discussed at the state legislature and the subject of speeches by many of Arizona's governors, including Governor Janet Napolitano. This is an issue deserving dispassionate review and debate.

The Arizona Policy Forum, in conjunction with an advisory committee of representatives of municipal water providers and state and local governments,[1] has developed this report to stimulate discussion of sound water management and planning.

This report offers three policy goals for all Arizona:

First:	Require that a long-term water supply must be demonstrated before new residential development is allowed to proceed.
Second:	Allow a new well to be drilled to serve a new residential use only if there is a 100-year water supply for the proposed use.

[1] The advisory committee met extensively for over a year. Appendix A is a list of the advisory committee members.

Third: Establish a state program of impact fees on new residential development to provide matching funds for water resources planning, acquisition and infrastructure to applicants demonstrating significant problems meeting current or projected residential water demands.

Background

Arizona is an arid state, averaging less than a dozen inches of precipitation per year. No one disputes that water in the desert is critical for survival. But reaching agreement on how Arizona's limited water supplies should be managed and allocated has not been easy. Indeed, "water wars" in Arizona have been the rule rather than the exception. This is especially true for Arizona's groundwater resources.

Unlike surface water, which has been regulated by the state since 1919, groundwater use in Arizona was virtually unregulated until 1980.[2] Failure of the state to enact meaningful regulations resulted in court-created laws to govern groundwater. In 1953, the Arizona Supreme Court adopted the rule of reasonable use, giving property owners the right to withdraw groundwater for reasonable and beneficial use on their land. The rule rewarded the user with the deepest well and the biggest pump, caused massive groundwater overdrafts, and resulted in costly disputes among water users.

Land swindlers benefited from the state's inability to regulate groundwater use. Unscrupulous developers sold raw land without water to unsuspecting buyers. Often the investments proved worthless. The Arizona Legislature attempted to abort this practice by passing a law in the seventies requiring that developers disclose to prospective purchasers of subdivision lots whether the land they were buying had water. But the law did not stop land sales.

By the late 1970s, Arizona's inability to regulate groundwater pumping had become a national issue. Congress balked at authorizing continued funding for the Central Arizona Project (CAP) and east coast newspapers often reported that the state was running out of water. Meanwhile, financial institutions became leery of backing investments in Arizona.

The Arizona Legislature finally faced the problems created by massive, unregulated groundwater pumping with the passage of the GMA. The GMA abolished the rule of reasonable use in AMAs. In place of the rule, the GMA identifies and places limits on rights to withdraw groundwater, regulates the drilling of new wells, prohibits the cultivation of new farm land, requires groundwater users to conserve groundwater pursuant to management plans adopted by the Department of Water Resources (DWR), and prohibits residential development for which there is not a 100-year "assured" water supply.

Outside of AMAs, however, the rule of reasonable use continues to govern groundwater withdrawals. There is no requirement to obtain a permit to drill a new well and there are no

[2] Appendix B is a history and summary of Arizona laws relating to surface water, groundwater and effluent, and federal law relating to Colorado River and Central Arizona Project water.

limits on how much groundwater any user may pump. While developers of new subdivisions are required to demonstrate whether there is a 100-year "adequate" water supply for the proposed subdivision, failure to show an adequate water supply does not prevent municipal, county or state real estate departments from approving the subdivision.

Impacts of the Assured Water Supply Requirement in AMAs

In the AMAS, water resources planning, management and development are robust and integrated, due in large measure to the assured water supply requirement, which requires that sufficient water of adequate quality will be continuously and legally available to satisfy the proposed use for 100 years. Significantly, the proposed use must also be consistent with the achievement of the AMA's management goal. The management goal for the Phoenix, Tucson and Prescott AMAs is safe-yield by the year 2025. (Safe-yield means a long-term balance between the amount of groundwater withdrawn and the amount of groundwater recharge.)

The assured water supply requirement prevents water providers in AMAs from serving new residential developments with mined groundwater. In recognition of this fact, municipal water providers have planned and acted accordingly. Significantly, because of the assured water supply requirements, municipal providers in the AMAs have:

- Increased Planning Horizons. Water resources planning horizons for the vast majority of municipal water providers changed almost immediately from a short-term horizon of 5 to 10 years to a long-term horizon of 50 to 100 years. Comprehensive municipal water resources plans are now the rule rather than the exception in the AMAs.

- Increased Use of Renewable Water Supplies. Utilization of renewable water supplies has increased measurably while dependence on groundwater has decreased. AMA municipal water providers are using Central Arizona Project ("CAP") supplies earlier than expected and are eager to obtain more CAP water. For example, some have purchased rights to CAP water formally allocated for irrigation use. Additionally, several Phoenix area cities participated in funding the cost of raising the height of Roosevelt Dam to increase storage space to capture additional Salt River water.

- Increased Effluent Reuse. Approximately 50 percent of the effluent currently produced by municipal water providers in the Phoenix AMA is now reused somewhere in the Phoenix AMA.

- Initiated Efforts to Import Groundwater . A number of municipal water providers in the Phoenix AMA purchased "water farms" in rural Arizona in order to import groundwater from those areas in the future. The City of Prescott currently is evaluating whether to exercise an option to purchase two ranches in the Big Chino Sub-Basin in order to import groundwater for use by Prescott AMA municipalities.

- Adopted Water Resources Related Fees. Municipalities have imposed development impact fees, which now range from $1,831 to as much as $15,000 for each single family dwelling unit, and water resources acquisition fees of up to $3,200 per dwelling unit.

- Increased Water Rates and Water Conservation. Since 1980, municipal water providers in the AMAs have required metering of all connections and instituted water rate structures designed to encourage water conservation. Water conservation efforts are wide spread throughout the AMAs.

- Implemented Extensive Recharge Programs. Municipal water providers in the AMAs initiated and supported legislation allowing recharge of CAP water, surface water, and wastewater effluent that would otherwise have gone unused. Over 754,000 acre feet of CAP water and effluent have been stored underground in the AMAs. Water stored underground is used to firm up surface water supplies during shortages or to demonstrate an assured water supply. Additionally, in lieu recharge programs and groundwater savings facilities—in which excess surface water is made available to persons who would otherwise pump groundwater—have resulted in nearly 1.1 million acre-feet of credits in the AMAs. These credits are used when surface water supplies are scarce and to demonstrate an assured water supply.

Challenges Facing Rural Arizona

Over the past decade, rural areas outside of the AMAs increasingly have become popular places to establish residences, businesses, and communities. The growth rates in some of these areas have been among the highest in the United States. While the populations of these communities continue to grow, development of long-term water supplies to support current populations and expected future growth has lagged behind. Unlike the AMAs, where there is a long tradition of planning and partnering with state and federal agencies to develop renewable water supplies, rural Arizona communities have only recently begun to address their long-term water supply needs.

Many of these rural communities rely almost exclusively on water pumped from wells. The aquifers tapped by these wells generally have limited storage capability and are fed largely, if not exclusively, by seasonal precipitation (such as snow melt), or are directly connected to streams or otherwise support the flow of streams. In some areas, groundwater basins are in a state of overdraft. For example, significant overdraft is occurring the Douglas, Willcox and Upper San Pedro groundwater basins. In the Tonto Creek groundwater basin where the cities of Payson, Pine and Strawberry are located, groundwater supplies are limited because of shallow aquifers with limited storage capacity. Since recharge of these aquifers depends on seasonal precipitation, groundwater supplies are even lower due to several years of below normal precipitation. On the Coconino Plateau where cities such as Williams and Flagstaff are located, groundwater is often pumped from depths exceeding 1200 feet below ground surface compared to other parts of the state where groundwater is extracted from depths of 100 to 700 feet. Greater depths to water significantly increase pumping costs.

Allowing growth without the availability of long-term water supplies poses severe risks for rural Arizona's economic and environmental vitality.

Water leaders in both rural and urban Arizona rightly worry that allowing growth without the availability of long-term water supplies poses severe risks for rural Arizona's economic and environmental vitality. Unfortunately, there are a number of institutional impediments to sound water planning and management in areas outside of the AMAs. Chief among these impediments is the inability of state, municipal and county agencies to deny subdivision approval when DWR determines there is not an adequate water supply for the subdivision. A related and significant problem is the lack of basic data that could provide the basis for future planning at the local level.

Recommendations[3]

To address these issues, the Arizona Policy Forum and its advisory committee have developed the following recommendations.

Recommendation 1: Require that a long-term water supply must be demonstrated before new residential development is allowed to proceed anywhere in the state.

This requirement is already firmly established in the AMAs through the assured water supply program. Amendments to the adequate water supply program outside of AMAs would ensure that future residential growth takes place only when a long-term water supply is available to sustain that growth. In the process, innocent homebuyers would be protected. These amendments would:

- Require that a developer demonstrate a 100-year water supply prior to obtaining plat approval from a city, town, or county.

- Prohibit the State Real Estate Commissioner from issuing a public report authorizing the sale of subdivided land unless the developer has obtained a certificate of adequate water supply from DWR or the development is within the service area of a city, town or private water company that is designated as having an adequate water supply.

- Define an adequate water supply to mean sufficient groundwater, surface water or effluent of adequate quality that is legally and continuously available to satisfy the uses of the subdivision for at least 100 years. Because there is no requirement to achieve safe-yield outside of AMAs, developers could still rely on mined groundwater to demonstrate an adequate water supply.

- Prohibit the Arizona Corporation Commission from ordering a private water company to provide water to developments for which there is not a 100-year water supply.

Recommendation 2: Allow a new well to be drilled to serve a new residential use only if there is a 100-year water supply for the proposed residential use.

Wells having a maximum pump capacity of not more than 35 gallons per minute are generally exempt from the requirements of the GMA. These so-called exempt wells may be drilled within or outside of an AMA after filing a notice of intention with DWR. However, like other wells, an exempt well must comply with DWR well-construction standards and be drilled by a well driller licensed by DWR.

Exempt wells and other wells (including large municipal supply wells) may be drilled even in areas lacking an adequate or assured water supply. The proliferation of exempt wells particularly exacerbates water supply problems and is often used to avoid the requirement to show an adequate water supply. Amendments to the GMA are necessary to prevent exempt

[3] Appendix C is draft legislative that incorporates the changes necessary to implement these recommendations.

wells from being used to avoid demonstrating a 100-year water supply and to ensure that municipal wells are not drilled to serve uses for which an adequate or assured water supply has not been demonstrated. These amendments would prohibit anyone from drilling a well, including an exempt well, to supply water for a new residential use unless DWR has determined that there is an assured or adequate water supply for the proposed residential use.

Recommendation 3: Establish a new state revolving fund to assist applicants that demonstrate significant problems meeting current or projected residential water demands.

Major obstacles to sound water management—especially outside of AMAs—are the lack of sufficient knowledge about the extent and availability of water supplies and the lack of adequate funding to conduct studies, develop plans, acquire water supplies and make those supplies available to the end user. Because sound water management is an issue of statewide concern and critical to the health of welfare of Arizona's citizens, it is prudent for the legislature to establish a state revolving fund to assist local jurisdictions in planning for and providing long-term water supplies. The proposed amendments would establish a Water Resources Planning, Acquisition and Infrastructure Revolving Fund that would:

- Consist of impact fees collected by all cities, towns and counties prior to issuing building permits to construct new single family or equivalent dwelling units. The amount of the impact fee would be $500 payable to the State Treasurer for each single family or equivalent dwelling unit.

- Be administered by the Director of the Department of Water Resources who would:

    - Develop an application process for monies from the fund.
    - Grant monies in the fund pursuant to rules adopted by the director that would assure adequate public participation in the funding process and prioritize the allocation of monies to applicants who demonstrate that significant water supply problems and funding needs are supported by local governments, and demonstrate the availability matching funds of at least 25 percent.

- Not preempt the ability of a city, town or county to impose other impact fees.

Conclusion

The 1980 Ground Water Management Act has resulted in a positive transformation of water resources planning, management and development in the state's AMAs. Cities, towns and other water providers charged with providing an assured water supply have taken significant steps to ensure that sufficient water is available to meet the needs of future growth. Growth has not been stopped. Instead, water supplies and growth are managed to sustain viable economies for decades to come.

The same cannot be said for many parts of rural Arizona that were excluded from the GMA provisions. Many of these areas are growing at extraordinary rates, placing substantial demands on limited water supplies.

Failure to ensure that new growth takes place only when a long-term water supply is available will lead to increasing conflicts among water users, negative financial consequences and, ultimately, water shortages. It is time to act. The Arizona Policy Forum urges local and state officials to study the recommendations contained in this report and to enact reforms to prevent a potential water crisis.

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Appendix A

ARIZONA POLICY FORUM
ADVISORY COMMITTEE MEMBERS

Roger S. Manning	Arizona Municipal Water Users Association
George Renner	Central Arizona Project
David C. Roberts	Salt River Project
John F. Sullivan	Salt River Project
Larry Tarkowski	Town of Prescott Valley
Greg Wallace	Errol L. Montgomery
David Brown	Brown & Brown Law Offices, St. Johns
Herb Dishlip	Dishlip Consulting
Roger Gingrich	City of Yuma
John Munderloh	Yavapai County
Judy Gignac	Bella Vista Water Company
Ron Doba	City of Flagstaff
Thomas Whitmer	Arizona Department of Water Resources
Herb Guenther	Arizona Department of Water Resources
Ron Christensen	Gila County Board of Supervisors

Appendix B

ARIZONA WATER LAWS

Surface Water

Surface water rights in Arizona are governed by the doctrine of prior appropriation. The doctrine of prior appropriation may best be explained by the principle of "first in time, first in right", meaning that a person who first uses the waters of a stream has the better right to use those waters, as against all subsequent users. Water may be appropriated in Arizona for domestic, municipal, irrigation, stock watering, water power, recreation, wildlife, including fish, artificial groundwater recharge, and for mining uses. Water may be appropriated for personal use by the appropriator, or for delivery to other users. The general standard for quantifying an appropriative surface water right is the doctrine of beneficial use.

Appropriable water refers to most types of surface water and includes "waters of all sources, flowing in streams, canyons ravines or natural channels, or in definite underground channels, perennial or intermittent, flood, waste or surplus water, and lakes and ponds and springs on the surface..."

Over the years, the laws governing the acquisition of surface water rights in Arizona have been modified several times.

It is important to note that underground water, other than flowing in a definite channel, is not mentioned as a category of appropriable water. However, the Arizona Supreme Court has determined that those waters which slowly find their way through sand and gravel constituting the bed of the stream, or the lands under or immediately adjacent to the stream, are themselves a part of the surface stream and are considered surface water. This type of appropriable surface water is generally referred to as "subflow." The legal definition of subflow has been further defined by a recent Arizona Supreme Court decision and the implementation of this decision is currently being considered as part of the General Stream Adjudications.

Over the years, the laws governing the acquisition of surface water rights in Arizona have been modified several times. As a result, there are numerous subcategories of appropriative rights.

Prior to June 12, 1919, an appropriative right could be perfected in Arizona by application of water to a beneficial use or by posting and filing in the County Recorders Office a Notice of Intent to Appropriate Water, followed by application of water to the beneficial use claimed in the Notice. In 1919, the Arizona Legislature revised the then-existing Water Code and enacted a comprehensive new Water Code. Under the new requirements, a person wishing to appropriate water had to first file an Application to Appropriate with the State Water Commissioner (now the Department of Water Resources (DWR)).

Under the permitting system for appropriative rights established by the 1919 Code and remaining in effect today, a person seeking to appropriate water must first file an Application to

Appropriate with DWR. In evaluating the Application to Appropriate, the Director of DWR must consider whether the "proposed use conflicts with vested rights, is a menace to public safety, or is against the interest and welfare of the public…" If any of these three conditions are present, the application will be rejected.

A few surface water rights in Arizona have been established by virtue of judicial decisions, rather than an agency action. These rights are commonly referred to as "decreed rights" with the decree itself constituting recognition by the court of the validity of the water right.

In addition to the above methods of appropriation there have been several other opportunities to file for water rights, including the Water Rights Registration Act of 1974 (amended in 1995) and the Stock-Pond Registration Act of 1977.

Prior appropriation rights in Arizona are presently subject to little supervision or enforcement. The general lack of enforcement is largely attributable to Arizona's ongoing effort to adjudicate surface water rights in court. Arizona is undertaking general stream adjudications of both the Gila River and Little Colorado River systems. The judicial proceeding will determine the extent and priority of water rights in each of these river systems.

Groundwater

Groundwater Law Prior to 1980

Prior to 1980, groundwater law in Arizona had developed primarily through Arizona Supreme Court decisions. Under these decisions, groundwater, unlike surface water, was not a public resource and was not governed by the law of prior appropriation. Instead, groundwater was governed by the rule of reasonable use. Under this rule, property owners had the right to capture and use the groundwater beneath their land for reasonable and beneficial use on that land. However, groundwater could not be transported away from the land from which it was pumped if the groundwater supply of a neighboring landowner was injured.

The only statutory controls on groundwater use were enacted by the legislature in 1948 after the Secretary of the Interior warned that groundwater in Arizona must be subjected to regulation or the Central Arizona Project would not be authorized. The 1948 law, known as the Critical Groundwater Code, was intended to be a stopgap measure, but remained in the statutes until 1980.

The Critical Groundwater Code allowed the State Land Department to declare critical groundwater areas where there was insufficient groundwater to provide a reasonably safe supply for irrigation of the farmlands then in cultivation. It did not place any limitations on the amount of groundwater that could be pumped by any user, but only limited expansion of irrigation and placed restrictions on new agricultural wells. The Critical Groundwater Code also did not address competing uses of groundwater and, with the acceleration of the cotton boom and industrial and municipal uses of groundwater, disputes among groundwater users ended up in the courts.

In 1952, the Arizona Supreme Court by a 3-2 margin, issued a decision declaring all groundwater to be public property subject to the rule of prior appropriation.[4] But this controversial decision was short-lived. The court granted a rehearing and, in 1953, reversed its decision.[5] In a 3-2 decision the court reapproved the rule of reasonable use, citing the need to protect property rights acquired in reliance on prior court decisions.

For the next 25 years, the Arizona Supreme Court continued to issue controversial decisions involving the transportation of groundwater.[6] In 1969, the Court enjoined the City of Tucson from transporting groundwater from the Avra and Alter Valleys near the City.[7] The court later modified this decision to allow Tucson to purchase and retire farmlands in the two valleys and transport the historical amount of groundwater used on the lands.[8] The court limited Tucson to transporting only the amount of groundwater formerly consumed on farmland that Tucson had purchased and retired from irrigation.

In 1976, the Supreme Court handed down a decision that would radically change the nature of groundwater use. The case, *Farmers Investment Company v. Bettwy (FICO)*,[9] involved a large pecan farming corporation in Pima County, the City of Tucson, and several copper mining companies. The court prohibited Tucson and the mines from pumping groundwater and transporting for use at a different location if the wells of the farming corporation were adversely affected. The decision authorized FICO to seek injunctive relief to severely curtail pumping by the city and the mines.

The Groundwater Management Study Commission

The FICO decision created an atmosphere of crisis. Lobbyists for the mines and the cities descended on the legislature and, by early in the 1978 legislative session, dozens of bills had been introduced to alter the FICO decision. But after three months of meetings to agree on a bill, negotiators for the mines, cities and agriculture could reach only a temporary solution to permit certain transportations of groundwater to continue. As part of the compromise, the legislature established the Groundwater Management Study Commission and charged it with rewriting Arizona's groundwater laws.

The commission included both legislators and governor-appointed representatives of the major water-using interests. After 18 months of study and debate, the commission approved tentative recommendations for groundwater management. Commissioners for the mines and cities convinced a bare majority of the Commission to vote for several management strategies opposed by agriculture. At public hearings on the tentative recommendations in the summer of 1979, agricultural users turned out in full force to denounce the work of the commission.

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[4] *Bristor v. Cheatham (Bristor I)*, 73 Ariz. 228, 240 P. 2d 185.
[5] *Bristor v. Cheatham (Bristor II)*, 75 Ariz. 227i, 255 P.2d 173.
[6] The *Bristor* cases also involved the transportation of groundwater. Cheatham was pumping groundwater "off the land" to a point three miles distant and Bristor claimed his wells were drying up and sought damages and injunctive relief.
[7] *Jarvis v. State Land Department (Jarvis I)*, 104 Ariz. 527, 456 P.2d 385.
[8] *Jarvis v. State Land Department (Jarvis II)*, 106 Ariz. 506, 479 P.2d 169.
[9] 113 Ariz. 520, 588 P. 2d 14.

In the fall of 1979, Secretary of the Interior, Cecil Andrus, warned that the Central Arizona Project would not proceed on schedule if Arizona did not enact groundwater reforms in 1980. Shortly after the Secretary's pronouncement, representatives of the mines, cities and agriculture began private negotiations to reconcile their differences and invited Governor Bruce Babbitt to mediate their discussions. The negotiators became known as the Rump Group. Their marathon sessions, which began in October of 1979, lasted through the spring of 1980 and finally resulted in a draft groundwater management bill. On June 6, 1980, the Groundwater Management Study Commission approved the bill. In an one-day special session, the legislature adopted the bill recommended by the commission without amendment, and Governor Babbitt signed it into law on June 12, 1980.

Groundwater Management Act of 1980

The Groundwater Management Act of 1980 (GMA) quantifies and regulates rights to withdraw groundwater in geographic areas of the state where the overdraft, or mining, of groundwater is most severe. These areas are called Active Management Areas or AMAs. Within the AMA, the code identifies and places limits on rights to withdraw groundwater, regulates the drilling of new wells, requires, groundwater users to conserve groundwater pursuant to management plans adopted by the Department of Water Resources, and prohibits urban development for which there is not a 100-year assured water supply. Following is a summary of the major provisions of the GMA:

1. Active Management Areas. The GMA established four AMAs on June 12, 1980—the Phoenix AMA, the Tucson AMA, the Pinal AMA and the Prescott AMA. On July 1, 1994, the legislature established the Santa Cruz AMA. The majority of the provisions of the GMA apply only in AMAs. Subsequent AMAs may be established by the Department of Water Resources (DWR) if it is determined, after notice and hearing, that preservation of groundwater supplies is necessary, land subsidence or fissuring is endangering property, or use of groundwater has serious water quality implications. Subsequent AMAs may also be established by petition and election by local residents.

2. AMA Management Goals. The GMA sets management goals for each of the AMAs. For the Phoenix, Tucson, and Prescott AMAs, the goal is safe-yield by the year 2025. Safe-yield is a long-term balance between the annual amount of groundwater withdrawn in the AMA and the annual amount of natural and artificial recharge in the AMA. The management goal for the Pinal AMA is to preserve existing agricultural economies as long as feasible, consistent with the need to preserve water supplies for non-irrigation uses. The management goal for the Santa Cruz AMA is to maintain safe-yield and prevent local water tables from experiencing long-term declines.

3. No New Agricultural Uses. In the AMAs, the expansion of agricultural land is prohibited. In general, only land that was irrigated some time between 1975 and 1980 may be irrigated.

4. Rights and Permits to Withdraw Groundwater. In AMAs, the rule of reasonable use is no longer the law. A person may withdraw groundwater only pursuant to a grandfathered right, a service area right, a permit issued by DWR or an exempt well. Grandfathered

Rights are exactly what the name implies--rights to withdraw groundwater based on uses that pre-date the passage of the GMA. Irrigation Grandfathered Rights allow land that was historically irrigated for commercial agricultural production to continue to be irrigated with groundwater. Non-Irrigation Grandfathered Rights are rights to withdraw a specific quantity of water for non-agricultural uses. Grandfathered Rights may be sold or leased. Service Area Rights allow municipal water providers (cities, towns and private water companies) to withdraw groundwater within their service areas for the benefit of landowners and residents within their service areas.

The GMA recognized that is may not be possible for all new non-municipal uses of groundwater in AMAs to be satisfied through the purchase of Grandfathered Rights or by water service from a municipal provider. DWR may issue groundwater withdrawal permits for specific types of commercial and industrial uses and under specific conditions.

A person may also withdraw groundwater from an exempt well. Exempt wells are wells that can withdraw only a small quantity of water and are generally used for domestic purposes.

5. Mandatory Conservation Requirements. The GMA requires DWR to adopted a series of management plans for each AMA designed to achieve the AMA's management goal. Each management plan must include a continuing mandatory conservation program for all persons withdrawing groundwater in the AMA. In each successive management plan, conservation requirements become progressively more stringent. For municipal users, the GMA requires progressive reductions in overall per capita consumption, as well as specific conservation measures for individual users. Industrial users are required to use the latest commercially available conservations technology consistent with reasonable economic return.

6. Well Drilling Limitations. The GMA requires a permit to drill a new municipal, industrial or agricultural well. Prior to issuing a permit, DWR must determine that the proposed well will not unreasonably increase damage to surrounding land and other water users from the concentration of wells.

7. Assured Water Supply. One of the most striking and innovative features of the GMA is its requirement that proposed residential developments must have an assured water supply before they are allowed to proceed. DWR must also designate municipal providers that have demonstrated an assured water supply for their customers. An assured water supply means that sufficient water of adequate quality will be continuously available to satisfy the needs of the development for at least 100 years. Originally included to prevent unscrupulous developers from selling land without water to innocent homebuyers, this assured water supply provisions have become one of the GMA's most effect management tools. Because municipalities must have an assured water supply to grow and only a small percentage of that supply may come from groundwater, municipalities are forced to find alternative water supplies to fuel growth.

8. Rural Areas. Outside of Active Management Areas, the GMA requires little regulation of groundwater use. With the exception of Irrigation Non-Expansion Areas, outside of the AMAs, any person may withdraw groundwater for reasonable and beneficial use. There are no restrictions on the drilling of new wells, no limitations on new uses of groundwater and no requirements to conserve water. Although the developer of a proposed subdivision is required to submit plans to DWR showing the adequacy of the water supply for the subdivision, the developer may sell lots in the subdivision even if DWR had determined that the water supply is inadequate.

   There are currently three Irrigation Non-Expansion Areas (INAs) in rural Arizona. An INA is a groundwater basin or sub-basin in which there is insufficient groundwater to provide a reasonably safe supply for the irrigation of the lands in cultivation. In an INA, only acres of farmland that were historically irrigated may continue to be irrigated.

9. Exclusion of Rural Areas from Regulation. The primary focus of the Groundwater Management Study Commission was to develop a regulatory structure to control groundwater uses in those areas of the state where the overdraft was most severe and where competing uses of groundwater had resulted in litigation. The urgency to adopt laws to curb groundwater use was greatest in Maricopa, Pima and Pinal Counties because the majority of the water supply of the Central Arizona Project was dedicated to these areas. Indeed, in the years leading up to the GMA, there was no perceived water supply problem in most areas of rural Arizona. When the Study Commission conducted public meetings around the state during the two years prior to 1980, most rural areas adamantly opposed state regulation of their groundwater resources.

Effluent

Effluent is generally defined as water that has been collected in a sanitary sewer for subsequent treatment in a water collection and treatment facility. It is a distinct type of water that is neither groundwater nor surface water regardless of whether its original source was groundwater or surface water. Thus, effluent is not subject to the same laws governing groundwater or surface water.

The producer of effluent has broad discretion over its use and is only subject to the requirement of reasonable use. If the producer of effluent elects to discharge effluent, it remains effluent until it acquires the characteristics of groundwater or surface water. For example, effluent discharged into a stream takes on the characteristics of surface water and can be appropriated by others. However, the producer of the effluent has no obligation to continue the discharge and may make a different reasonable use of the water at any time.

FEDERAL LAWS

Law of the Colorado River

The Colorado is an interstate river, the waters of which have been divided among the Colorado River Basin states by interstate compact, acts of Congress and decisions of the U.S. Supreme Court. In 1922, representatives of the basin states agreed by compact to divide the River's waters between the Upper Basin and Lower Basin at Lees Ferry—each basin to receive, on average, 7.5 million acre-feet (maf) per year. Subsequently, the U.S. agreed to deliver 1.5 maf per year to Mexico. The Lower Basin's 7.5 maf was divided among the three lower basin states by Congress in the Boulder Canyon Project Act as follows: California 4.4 maf, Arizona 2.8 maf and Nevada .3 maf.
The U.S. Supreme Court in its decision in *Arizona v. California* in 1963 confirmed this apportionment and held that the use of tributary water in Arizona—such as from the Gila River--did not count against Arizona's 2.8 maf apportionment. The decree also established the rules under which the Secretary of the Interior was to act as river master for Lower Basin water. Any water from the mainstream of the Colorado River used in a lower basin state is to be counted against that state's apportionment. If, for instance, Nevada were to buy Colorado River water from California or Arizona, it would be counted against Nevada's .3 maf apportionment, rendering the purchase, for all practical purposes, valueless.

An important element of the law of the river is that a state's unused apportionment in any year can be directed by the Secretary of the Inerior to one of the other two states. Until very recently, Arizona was unable to use its full 2.8 maf apportionment, so the unused portion was taken by California—specifically the Metropolitan Water District of Southern California (MWD). Surplus conditions on the river also allowed California water users to take additional water for many years. As a result, California grew accustomed to receiving about .8 maf more than its entitlement, with most of that water going to MWD.

More recently, California has been allowed to take additional water under interim surplus guidelines, which were conditioned on California developing and implementing a plan to reduce its Colorado River use to 4.4 maf within 15 years. When California failed to adopt the program by the end of 2002, the interim surplus guidelines were suspended. Consequently, the Secretary limited California to 4.4 maf in 2003.

At the request of the three lower basin states, the Secretary has established an interstate water banking program under which Colorado River water may be stored in one state for the benefit of another. In future years, the water would be recovered by the storing state, which in turn would intentionally create unused apportionment by reducing its Colorado River use. The Secretary would then release the intentionally created unused apportionment for use by the state that paid to store the water in the first instance. Under this program, Arizona and Nevada have entered into an interstate banking agreement.

The Central Arizona Project

The decision in *Arizona v. California* recognized existing rights to Colorado River water in Arizona totaling 1.0 to 1.2 maf. After the Supreme Court's decision, Congress, in 1968, authorized the construction of the Central Arizona Project to carry about 1.5 maf of river water into central Arizona. The Central Arizona Water Conservation District (CAWCD) was formed in 1972 by Maricopa, Pinal and Pima Counties to contract with the Secretary of the Interior to operate the Project, deliver the water and repay the reimbursable cost of the Project.

In 1983, the Secretary of the Interior allocated the CAP water supply among Indian, municipal and industrial and non-Indian agricultural water users based on recommendations from the State: 638,823 acre-feet was allocated to M&I users, 309,828 acre-feet to Indian tribes, and the balance to non-Indian agricultural users.

While most of the CAP water was allocated to users within the three counties that make up CAWCD, a number of M&I providers and Indian tribes outside the CAP service area also received allocations of CAP water, including Prescott, Payson, Camp Verde, Cottonwood, Nogales, Rio Rico, Globe, and the Yavapai Apache (Camp Verde), Tonto Apache and Yavapai-Prescott Apache Tribes. It was assumed that these allocations could be delivered through exchanges with other water users. However, the communities were not able to implement exchanges for a number of legal and technical reasons. Instead, many of these communities sold their CAP allocations, with the proceeds going into trust funds that were to be used to develop other water supplies.

Since 1983, the Secretary has acquired for use by Indian tribes an additional 143,396 acre-feet of CAP water formerly allocated to non-Indian users, including 18,145 acre-feet of M&I water, bringing the federal total to 453,224 acre-feet. Of the 1983 M&I allocation, 555,031 acre-feet is under subcontract to M&I water providers. The remaining 65,647 acre-feet of M&I priority water is currently uncontracted, but the Director of the Arizona Department of Water Resources (ADWR) has submitted a proposed reallocation for that water to the Secretary.

The non-Indian agricultural subcontractors were not allocated specific quantities of water. Instead, each was entitled to a percentage of the available agricultural supply, which was all of the CAP water not taken in any year by those with higher priority, fixed entitlements. Those subcontracts also required that the agricultural users pay the fixed operation and maintenance costs for the CAP water available to them, whether or not they took delivery of the water. By the time the subcontracts became effective in 1993, it was clear that the non-Indian agricultural subcontractors would not be able to take all of the water available to them or pay the amounts due under the subcontracts.

To address this problem, CAWCD and the agricultural subcontractors entered into so-called "letter agreements" under which the subcontractors waived their right to take CAP water under their subcontracts, CAWCD waived its right to collect the take-or-pay payments due under the subcontracts, and CAWCD agreed to provide low-cost excess CAP water. The letter agreements were effective for 10 years and will expire at the end of 2003.

As part of an overall CAP water settlement with the United States, the non-Indian agricultural subcontractors have been invited to permanently relinquish their long-term CAP entitlements in exchange for relief from certain federal debt and regulatory requirements and the continued delivery of low-cost excess CAP water through 2030. The Congressional authorization necessary to implement that agreement is contained in the Arizona Water Settlements Act, a bill recently introduced in Congress by Arizona Senator Jon Kyl. Under the bill, about two-thirds of the CAP water relinquished by non-Indian agricultural subcontractors would be reallocated for use in Indian water settlements and the remainder would go to ADWR to be held in trust for future allocation to M&I water providers. The reallocated water would retain its agricultural priority. The bill also provides for a permanent division of the CAP water supply between federal and non-federal uses: 667,724 acre-feet would be devoted to the federal (Indian) use and 747,276 acre-feet would be reserved for non-Indian purposes. The bill also directs the Secretary to reallocate the 65,647 acre-feet of uncontracted M&I water to specific M&I water providers in accordance with ADWR's recommendations.

Appendix C

DRAFT LEGISLATION

(New wording in caps; deleted wording from existing law crossed out)

§ 9-463.01 Authority

A. Pursuant to the provisions of this article, the legislative body of every municipality shall regulate the subdivision of all lands within its corporate limits.

B. The legislative body of a municipality shall exercise the authority granted in subsection A of this section by ordinance prescribing:

1. Procedures to be followed in the preparation, submission, review and approval or rejection of all final plats.

2. Standards governing the design of subdivision plats.

3. Minimum requirements and standards for the installation of subdivision streets, sewer and water utilities and improvements as a condition of final plat approval.

C. By ordinance, the legislative body of any municipality shall:

1. Require the preparation, submission and approval of a preliminary plat as a condition precedent to submission of a final plat.

2. Establish the procedures to be followed in the preparation, submission, review and approval of preliminary plats.

3. Make requirements as to the form and content of preliminary plats.

4. Determine that certain lands may either not be subdivided, by reason of adverse topography, periodic inundation, adverse soils, subsidence of the earth's surface, high water table, lack of water or other natural or man-made hazard to life or property, or control the lot size, establish special grading and drainage requirements, and impose other regulations deemed

reasonable and necessary for the public health, safety or general welfare on any lands to be subdivided affected by such characteristics.

5. Require payment of a proper and reasonable fee by the subdivider based upon the number of lots or parcels on the surface of the land to defray municipal costs of plat review and site inspection.

6. Require the dedication of public streets, sewer and water utility easements or rights-of-way, within the proposed subdivision.

7. Require the preparation and submission of acceptable engineering plans and specifications for the installation of required street, sewer, electric and water utilities, drainage, flood control, adequacy of water and improvements as a condition precedent to recordation of an approved final plat.

8. Require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

D. The legislative body of any municipality may require by ordinance that land areas within a subdivision be reserved for parks, recreational facilities, school sites and fire stations subject to the following conditions:

1. The requirement may only be made upon preliminary plats filed at least thirty days after the adoption of a general or specific plan affecting the land area to be reserved.

2. The required reservations are in accordance with definite principles and standards adopted by the legislative body.

3 The land area reserved shall be of such a size and shape as to permit the remainder of the land area of the subdivision within which the reservation is located to develop in an orderly and efficient manner.

4. The land area reserved shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

E. The public agency for whose benefit an area has been reserved shall have a period of one year after recording the final subdivision plat to enter into an agreement to acquire such reserved land area. The purchase price shall be the fair market value of the reserved land area at the time of the filing of the preliminary subdivision plat plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including the interest cost incurred on any loan covering such reserved area.

F. If the public agency for whose benefit an area has been reserved does not exercise the reservation agreement set forth in subsection E of this section within such one year period or such extended period as may be mutually agreed upon by such public agency and the subdivider, the reservation of such area shall terminate.

G. The legislative body of every municipality shall comply with all provisions of this article and applicable state statutes pertaining to the hearing, approval or rejection, and recordation of:

1. Final subdivision plats.

2. Plats filed for the purpose of reverting to acreage of land previously subdivided.

3. Plats filed for the purpose of vacating streets or easements previously dedicated to the public.

4. Plats filed for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.

H. Approval of every preliminary and final plat by a legislative body is conditioned upon compliance by the subdivider with:

1. Rules as may be established by the department of transportation relating to provisions for the safety of entrance upon and departure from abutting state primary highways.

2. Rules as may be established by a county flood control district relating to the construction or prevention of construction of streets in land established as being subject to periodic inundation.

3. Rules as may be established by the department of health services or a county health department relating to the provision of domestic water supply and sanitary sewage disposal.

I. If the subdivision is comprised of subdivided lands, as defined in section 32-2101, and is within a groundwater active management area, as defined in section 45-402, the final plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. The legislative body of the municipality shall note on the face of the final plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply, pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

J. IF THE SUBDIVISION IS COMPRISED OF SUBDIVIDED LANDS, AS DEFINED IN SECTION 32-2101, AND IS OUTSIDE OF A GROUNDWATER ACTIVE MANAGEMENT AREA, AS DEFINED IN SECTION 45-402, THE FINAL PLAT SHALL NOT BE APPROVED UNLESS IT IS ACCOMPANIED BY A CERTIFICATE OF ADEQUATE WATER SUPPLY ISSUED BY THE DIRECTOR OF WATER RESOURCES, OR UNLESS THE SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVICE FOR THE SUBDIVISION FROM A CITY, TOWN OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY BY THE DIRECTOR OF WATER RESOURCES PURSUANT TO SECTION 45-108. THE LEGISLATIVE BODY OF THE MUNICIPALITY SHALL NOTE ON THE FACE OF THE FINAL PLAT THAT A CERTIFICATE OF ADQUATE WATER SUPPLY HAS BEEN SUBMITTTED WITH THE PLAT OR THAT THE SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVICE FOR THE PROPOSED SUBDIVISION FROM A CITY, TOWN, OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY PURSUANT TO SECTION 45-108.

~~J~~ K. Every municipality is responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder.

~~K~~ L. Pursuant to provisions of applicable state statutes, the legislative body of any municipality may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.

~~L~~ M. The legislative bodies of cities and towns may by ordinance regulate land splits within their corporate limits. Authority granted under this section refers to the determination of

division lines, area and shape of the tracts or parcels and does not include authority to regulate the terms or condition of the sale or lease nor does it include the authority to regulate the sale or lease of tracts or parcels that are not the result of land splits as defined in section 9-463.

~~M~~ N. For any subdivision that consists of ten or fewer lots, tracts or parcels, each of which is of a size as prescribed by the legislative body, the legislative body of each municipality may waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat and may waive or reduce infrastructure standards or requirements except for improved dust-controlled access and minimum drainage improvements.

§ 32-2181. Notice to commissioner of intention to subdivide lands; unlawful acting in concert; exceptions; deed restrictions; definition

Amend subsection F to read:

F. ~~In areas~~ IF THE SUBDIVISION IS outside of A groundwater active management ~~areas~~ AREA established pursuant to title 45, chapter 2, article 2, ~~if the director of water resources, pursuant to section 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the state real estate commission shall require that all promotional material and contracts for the sale of lots in subdivisions approved by the commissioner adequately display the director of water resources' report or the developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision~~ THE SUBDIVIDER SHALL ACCOMPANY THE NOTICE WITH A CERTIFICATE OF ADEQUATE WATER SUPPLY ISSUED BY THE DIRECTOR OF WATER RESOURCES, UNLESS THE SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVICE FOR THE SUBDIVISION FROM A CITY, TOWN OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY BY THE DIRECTOR OF WATER RESOURCES PURSUANT TO § 45-108. IF THE SUBDIVIDER HAS SUBMITTED A CERTIFICATE OF ADEQUATE WATER SUPPLY TO A CITY, TOWN OR COUNTY PRIOR TO APPROVAL OF THE PLAT BY THE CITY, TOWN OR COUNTY AND THIS HAS BEEN NOTED ON THE FACE OF THE PLAT, THE SUBMISSION CONSTITUTES COMPLIANCE WITH THIS SECTION.

§ 32-2183. Subdivision public reports; denial of issuance; unlawful sales, voidable sale or lease; order prohibiting sale or lease; investigations; hearings; summary orders

Add new subsection F to read:

F. IF THE SUBDIVISION IS OUTSIDE OF A GROUNDWATER ACTIVE MANAGEMENT AREA, AS DEFINED IN SECTION 45-402, THE COMMISSIONER SHALL DENY ISSUANCE OF A PUBLIC REPORT OR THE USE OF ANY EXEMPTION PURSUANT TO SECTION 32-2182.01, SUBSECTION B UNLESS THE SUBDIVIDER HAS BEEN ISSUED A CERTIFICATE OF ADEQUATE WATER SUPPLY BY THE DIRECTOR OF WATER RESOURCES, OR UNLESS THE SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVCE FOR THE SUBDIVISION FROM A CITY, TOWN OR PRIVATE WATER COMPANY DESIGNED AS HAVING AN ADEQUATE WATER SUPPLY BY THE DIRECTOR OF WATER RESOURCES PURSUANT TO SECTION 45-108.

§ 40-321. Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporationA. When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper adequate or sufficient, and shall enforce its determination by order or regulation.

B. The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and upon the conditions prescribed.

C. NOTWITHSTANDING ANYTHING IN THIS SECTION OR TITLE 40 TO THE CONTRARY, THE COMMISSION SHALL NOT ORDER A PUBLIC SERVICE CORPORATION TO PROVIDE WATER SERVICE TO SUBDIVIDED LANDS, AS DEFINED IN § 32-2101, IF THE DIRECTOR OF WATER RESOURCES HAS DETERMINED PURSUANT TO SECTIONS 45-108 OR 45-576 THAT THERE IS NOT AN ADEQUATE OR ASSURED WATER SUPPLY FOR THE SUBDIVIDED LANDS.

45-108. Certificate of adequate water supply; designated cities, towns and private water companies; new wells for residential use; definitions

A. In areas outside of active management areas established pursuant to chapter 2, article 2 of this title, ~~the developer of a proposed subdivision including dry lot subdivisions, regardless of subdivided lot size, prior to recordation of the plat, shall submit plans for the water supply for the subdivision and demonstrate the adequacy of the water supply to meet the needs projected by the developer to the director. The director shall evaluate the plans and issue a report on the plans.~~ A PERSON WHO PROPOSES TO OFFER SUBDIVIDED LANDS, AS DEFINED IN § 32-2101, INCLUDING DRY LOT-SUBDIVISIONS, REGARDLESS OF SUBDIVIDED LOT SIZE, FOR SALE OR LEASE SHALL APPLY FOR AND OBTAIN A CERTIFICATE OF ADEQUATE WATER SUPPLY FROM THE DIRECTOR PRIOR TO PRESENTING THE PLAT FOR APPROVAL TO THE CITY, TOWN OR COUNTY IN WHICH THE LAND IS LOCATED, WHERE SUCH IS REQUIRED, AND PRIOR TO FILING WITH THE STATE REAL ESTATE COMMISSIONER A NOTICE OF INTENTION TO OFFER SUCH LANDS FOR SALE OR LEASE, PURSUANT TO § 32-2181, UNLESS THE SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVICE FOR THE SUBDIVISION FROM A CITY, TOWN OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY PURSUANT TO THIS SECTION.

~~B. The Director shall evaluate the proposed source of water for the subdivision to determine its ability to meet proposed uses for a period of years commensurate with normal practices in other areas of the state and shall forward a copy of such evaluation to the state real estate commissioner.~~

B. A CITY, TOWN OR COUNTY MAY APPROVE A SUBDIVISION PLAT ONLY IF THE SUBDIVIDER HAS OBTAINED A CERTIFICATE OF ADEQUATE WATER SUPPLY FROM THE DIRECTOR OR THE SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVICE FOR THE SUBDIVISION FROM A CITY, TOWN OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY PURSUANT TO THIS SECTION. THE CITY, TOWN OR COUNTY SHALL NOTE ON THE FACE OF THE APPROVED PLAT THAT A CERTIFICATE OF ADEQUATE WATER SUPPLY HAS BEEN SUBMITTED WITH THE PLAT OR THAT THE

SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVICE FOR THE PROPOSED SUBDIVISION FROM A CITY, TOWN OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY PURSUANT TO THIS SECTION.

C. THE STATE REAL ESTATE COMMISSIONER MAY ISSUE A PUBLIC REPORT AUTHORIZING THE SALE OR LEASE OF SUBDIVIDED LANDS ONLY IF THE SUBDIVIDER, OWNER OR AGENT HAS OBTAINED A CERTIFICATE OF ADEQUATE WATER SUPPLY FROM THE DIRECTOR OR THE SUBDIVIDER HAS OBTAINED A WRITTEN COMMITMENT OF WATER SERVICE FOR THE LANDS FROM A CITY, TOWN OR PRIVATE WATER COMPANY DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY PURSUANT TO THIS SECTION.

~~C.~~ D. The director ~~may~~ SHALL designate cities, towns and private water companies ~~as having an adequate water supply by reporting that designation to the water department of the city or town or private water company and the state real estate commissioner~~ WHERE AN ADEQUATE WATER SUPPLY EXISTS. The director may designate a city or town that does not directly supply water to customers as having as adequate water supply ~~by reporting that designation to the city or town or the state real estate commissioner~~ if all of the following apply:

1. The city or town has entered into a contract with the United States secretary of the interior or a county water authority established pursuant to chapter 13 of this title for permanent supplies of Colorado river water for municipal and industrial use OR THE CITY OR TOWN HAS SECURED A PERMANENT WATER SUPPLY FROM OUTSIDE OF THE GROUNDWATR SUB-BASIN OR SUB-BASINS IN WHICH THE CITY OR TOWN IS LOCATED.

2. The city or town has entered into a contract with each private water company that serves water within the city or town to provide ~~Colorado river~~ THE water DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION to those private water companies:

(a) IF THE WATER IS COLORADO RIVER WATER, IN A MANNER AUTHORIZED BY A CONTRACT WITH THE UNITED STATES SECRETARY OF THE INTERIOR.

(b) IF THE WATER IS NOT COLORADO RIVER WATER, IN A MANNER AUTHORIZED BY THIS TITLE.

3. The ~~Colorado river~~ water DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION for which the city or town has contracted is sufficient together with other water supplies available to the private water companies that serve water within that city or town to provide an adequate ~~supply of~~ water SUPPLY for the city or town.

4. The director finds that new subdivisions within the city or town will be served primarily with ~~Colorado river~~ THE water DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION by one of the private water companies that serve water within that city or town.

E. ~~The director shall not require a developer to submit plans for the water supply pursuant to subsection A of this section if ether:~~

~~1. Both of the following apply:~~

~~(a) The developer has obtained a written commitment of water service from cities, towns or private water companies that have been designated as having an adequate water supply.~~

~~(b) That city, town or private water company has been designated as having an adequate water supply pursuant to subsection C of this section.~~

~~2. All of the following apply:~~

~~(a) The city or town has been designated as having an adequate water supply pursuant to subsection D of this section.~~

~~(b) The developer has obtained a written commitment of water service from a private water company that serves water within that city or town.~~

~~(c) The developer has obtained the written concurrence of the city or town that has been designated.~~

THE DIRECTOR SHALL NOTIFY THE STATE REAL ESTATE COMMISSIONER, THE MAYORS OF ALL CITIES AND TOWNS AND THE CHAIRMAN OF THE BOARD OF SUPERVISORS OF EACH COUNTY OF THE CITIES, TOWNS AND PRIVATE WATER COMPANIES DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY AND ANYMODIFICATION OF THAT DESIGNATION WITHIN THIRTY DAYS OF THE DESIGNATION OR MODIFICATION. PERSONS PROPOSING TO OFFER SUBDIVIDED LANDS SERVED BY THOSE DESIGNATED CITIES, TOWNS AND PRIVATE WATER COMPANIES FOR SALE OR LEASE ARE EXEMPT FROM APPLYING FOR AND OBTAINING A CERTIFICATE OF ASSURED WATER SUPPLY.

F. The director may revoke a designation made pursuant to this section when the director finds that the water supply may become inadequate.

G. A PERSON MAY NOT DRILL OR CAUSE TO BE DRILLED A WELL, INCLUDING AN EXEMPT WELL AS DEFINED IN § 45-402, TO SUPPLY WATER FOR A NEW RESIDENTIAL USE UNLESS THE DIRECTOR HAS DETERMINED THAT THERE IS AN ADEQUATE WATER SUPPLY FOR THE PROPOSED RESIDENTIAL USE.

~~G~~ H. The state of Arizona and the director or department shall not be liable for any report, designation or evaluation prepared in good faith pursuant to this section.

I. THE DIRECTOR SHALL ADOPT RULES TO CARRY OUT THE PURPOSES OF THIS SECTION NO LATER THAN JANUARY 1, 2005. THE RULES SHALL PRESCRIBE REPORTING REQUIREMENTS FOR EACH CITY, TOWN AND PRIVATE WATER COMPANY THAT IS DESIGNATED AS HAVING AN ADEQUATE WATER SUPPLY OR PROVIDES WATER TO A SUBDIVISION FOR WHICH THE DIRECTOR HAS ISSUED A CERTIFICATE OF ADEQUATE WATER SUPPLY.

[COMMENT: DWR'S CURRENT ADEQUATE WATER SUPPLY RULES PROVIDE THAT THE DIRECTOR MUST MAINTIN A RECORD OF THE TOTAL WATER SUPPLY AND DEMAND STATUS FOR EACH HOLDER OF WATER REPORT AND DESIGNATION OF ADEQUATE WATER SUPPLY. THE RULES FURTHER REQUIRE THAT EACH DESIGNATED WATER PROVIDER MUST SUBMIT AN ANNUAL REPORT ON THE VOLUME OF WATER FROM EACH SOURCE DELIVERED TO ITS CUSTOMERS.]

J. FOR PURPOSES OF THIS SECTION:

1. "ADEQUATE WATER SUPPLY" MEANS ALL OF THE FOLLOWING:

a. SUFFICIENT GROUNDWATER, SURFACE WATER OR EFFLUENT OF ADEQUATE QUALITY WILL BE LEGALLY AND CONTINUOUSLY AVAILABLE TO SATISFY THE WATER NEEDS OF THE PROPOSED USE FOR AT LEAST ONE HUNDRED YEARS, EXCEPT THAT:

(1) THE DIRECTOR SHALL NOT CONSIDER THE PENDENCY OF A GENERAL STREAM ADJUDICATION PURSUANT TO TITLE 45, CHAPTER 1, ARTICLE 9 OR OTHER LEGAL ACTION ASSERTING A CLAIM TO WATER AS A BASIS FOR DETERMINING THAT WATER IS NOT PHYSICALLY OR LEGALLY AVAILABLE.

(2) THE QUALITY OF THE WATER SHALL BE DEEMED TO BE ADEQUATE IF THE DIRECTOR DETERMINES THAT THE WATER SUPPLIES, AFTER ANY REQUIRED TREATMENT, WILL TIMELY SATISFY STATE WATER QUALITY REQUIREMENTS AND ANY OTHER WATER QUALITY STANDARDS THAT ARE EFFECTIVE AS OF THE DATE OF THE APPLICATION AND ARE APPLICABLE TO THE PROPOSED WATER USE.

b. THE PROPOSED GROUNDWATER WITHDRAWALS OVER A PERIOD OF ONE HUNDRED YEARS WILL NOT, IN COMBINATION WITH OTHER WITHDRAWALS IN THE GROUNDWATER BASIN, REACH THE DEPTH OF THE BOTTOM OF THE AQUIFER. IN DETERMINING WHETHER SUCH WITHDRAWALS WILL REACH THE DEPTH OF THE BOTTOM OF THE AQUIFER, AS DEFINED IN SECTION 45-561, FOR PURPOSES OF THIS PARAGRAPH, THE DIRECTOR SHALL CONSIDER THE COMBINATION OF:

(1) THE EXISTING RATE OF DECLINE.

(2) THE PROPOSED WITHDRAWALS.

(3) THE EXPECTED WATER REQUIREMENTS OF ALL LOTS IN RECORDED SUBDIVISIONS THAT ARE NOT YET SERVED WATER AND THAT ARE LOCATED WITHIN THE MUNICIPAL BOUNDARIES OF A CITY, TOWN, IRRIGATION DISTRICT, OR OTHER POLITICAL SUBDIVISION OR WITHIN THE AREA COVERED BY THE CERTIFICATE OF CONVENIENCE AND NECESSITY OF A PRIVATE WATER COMPANY .

c. THE FINANCIAL CAPABILITY HAS BEEN DEMONSTRATED TO CONSTRUCT THE WATER FACILITIES NECESSARY TO MAKE THE SUPPLY OF WATER AVAILABLE FOR THE PROPOSED USE, INCLUDING A DELIVERY SYSTEM AND ANY STORAGE FACILITIES OR TREATMENT WORKS. THE DIRECTOR MAY ACCEPT EVIDENCE OF THE CONSTRUCTION ASSURANCES REQUIRED BY SECTION 9-463.01, 11-806.01 OR 32-2181 TO SATISFY THIS REQUIREMENT.

2. "NEW RESIDENTIAL USE" MEANS A USE RELATED TO THE SUPPLY, SERVICE AND ACTIVITIES OF HOUSEHOLDS AND PRIVATE RESIDENCES THAT WAS NOT IN EXISTENCE AS OF _____ (effective date of legislation).

45-117. Water resources planning, acquisition and infrastructure revolving fund; administration

A. THE WATER RESOURCES PLANNING, ACQUISITION AND INFRASTRUCTURE FUND IS ESTABLISHED CONSISTING OF MONIES COLLECTED PURSUANT TO SUBSECTION B OF THIS SECTION. THE DIRECTOR SHALL ADMINISTER THE FUND.

B. AFTER _____ (effective date of legislation) EACH CITY, TOWN OR COUNTY PRIOR TO ISSUING A BULDING PERMIT TO CONSTRUCT A NEW SINGLE FAMILY OR EQUIVALENT DWELLING UNIT, SHALL REQUIRE THE PAYMENT TO THE STATE TREASURER OF A WATER RESOURCES IMPACT FEE OF $250 ON EACH SINGLE FAMILY DWELLING UNIT.

C. THE DIRECTOR SHALL DEVELOP AN APPLICATION PROCESS FOR MONIES FROM THE FUND AND SHALL GRANT MONIES IN THE FUND ONLY FOR PROGRAMS OR PROJECTS LOCATED IN THIS STATE AND ONLY PURSUANT TO RULES ADOPTED BY THE DIRECTOR IN ACCORDANCE WITH ALL OF THE FOLLOWING GUIDELINES:

1. THE DIRECTOR SHALL PRIORITIZE THE ALLOCATION OF MONIES IN THE FUND TO APPLICATIONS THAT MEET ALL OF THE FOLLOWING:

a. DEMONSTRATE SIGNIFICANT WATER SUPPLY PROBLEMS AND RELATED FUNDING NEEDS.

b. ARE SUPPORTED BY THE AFFECTED CITIES, TOWNS AND COUNTIES.

c. ARE IN THE BEST INTEREST OF THE GENERAL ECONOMY AND WELFARE OF THE STATE.

2. EACH APPLICATION FOR MONIES FROM THE FUND SHALL DEMONSTRATE THE AVAILABILITY OF MATCHING FUNDS OF AT LEAST 25 PERCENT OF THE AMOUNT REQUESTED FROM THE FUND.

D. THIS SECTION DOES NOT PREEMPT THE ABILITY OF A CITY, TOWN OR COUNTY TO IMPOSE IMPACT FEES.

E. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

F. THE STATE TREASURER SHALL ALLOCATE NOR MORE THAN ___ PERCENT OF MONIES IN THE FUND TO THE DEPARTMENT TO COVER THE COSTS OF THE DEPARTMENT IN ADMINISTERING THE APPLICATION PROCESS AND MONITORING PROGRAMS AND PROJECTS GRANTED MONIES FROM THE FUND.

F. FOR PURPOSES OF THIS SECTION:

1. "FUND" MEANS THE WATER RESOURCES PLANNING, ACQUISION AND INFRASTRUCTURE FUND.

2. "SINGLE FAMILY OR EQUIVALENT DWELLING UNIT" MEANS (Comment: this definition is under construction.)

§ 45-454 <u>Exemption of small non-irrigation wells; definitions</u>

A. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute which were drilled before April 28, 1983 or which were drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on such date are exempt from the provisions of this chapter, except that:

1. Wells which were not completed on June 12, 1980 but for which a notice of intention to drill was on file with the Arizona water commission on such date are subject to subsections F, G and H of this section and must be registered pursuant to section 45-593. If two or more wells in an active management area are exempt under this paragraph and are used to serve the same non-irrigation use at the same location, the aggregate quantity of groundwater withdrawn from the wells shall not exceed fifty-six acre-feet per year.

2. Wells drilled between June 12, 1980 and April 28, 1983, except as provided in paragraph 1 of this subsection, and wells drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on April 28, 1983 are subject to subsections C, E, F and G of this section.

B. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute drilled on or after April 28, 1983, except wells drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on such date, are exempt from the provisions of this chapter, except that:

1. Such wells are subject to subsections C through H of this section.

2. In an active management area, other than a subsequent active management area designated for a portion of a groundwater basin in the regional aquifer systems of northern Arizona, withdrawals of groundwater from such wells for non-irrigation uses other than domestic purposes and stock watering shall not exceed ten acre-feet per year.

3. In a subsequent active management area that is designated for a portion of a groundwater basin in the regional aquifer systems of northern Arizona, groundwater withdrawn from such wells may be used only for domestic purposes and stock watering.

C. A person shall file a notice of intention to drill with the director pursuant to section 45-596 before drilling an exempt well or causing an exempt well to be drilled.

D. The registered well owner shall file a completion report pursuant to section 45-600, subsection B.

E. In an active management area only one exempt well may be drilled or used to serve the same non-irrigation use at the same location, except that a person may drill or use a second exempt well to serve the same non-irrigation use at the same location if the director determines that all of the following apply:

1. Because of its location, the first exempt well is not capable of consistently producing more than three gallons per minute of groundwater when equipped with a pump with a maximum capacity of thirty-five gallons per minute.

2. The second exempt well is located on the same parcel of land as the first exempt well, the parcel of land is at least one acre in size, all groundwater withdrawn from both exempt wells is used on that parcel of land and there are no other exempt wells on that parcel of land.

3. Combined withdrawals from both wells do not exceed five acre-feet per year.

4. If the second exempt well is drilled after January 1, 2000, the county health authority for the county in which the well is located or any other local health authority that controls the installation of septic tanks or sewer systems in the county has approved the location of the well in writing after physically inspecting the well site.

5. Use of two wells for the same non-irrigation use at the same location is not contrary to the health and welfare of the public.

F. An exempt well is subject to sections 45-594 and 45-595. OUTSIDE OF AN ACTIVE MANAGEMENT AREA, AN EXEMPT WELL IS SUBJECT TO SECTION 45-108, SUBESECTION G. INSIDE OF AN ACTIVE MANAGEMENT AREA, AN EXEMPT WELL IS SUBJECT TO SECTION 45-576, SUBSECTION H.

G. Groundwater withdrawn from an exempt well may be transported only pursuant to the provisions of articles 8 and 8.1 of this chapter.

H. A person who owns land from which exempt withdrawals were being made as of the date of the designation of the active management area is not eligible for a certificate of grandfathered right for a type 2 non-irrigation use for such withdrawals.

I. In this section:

1. "Domestic purposes" means uses related to the supply, service and activities of households and private residences and includes the application of water to less than two acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

2. "Stock watering" means the watering of livestock, range livestock or poultry, as such terms are defined in section 3-1201.

§ 45-576 Certificate of assured water supply; designated cities, towns and private water companies; exemptions; definitions

Add new subsections H and I to read:

H. A PERSON MAY NOT DRILL OR CAUSE TO BE DRILLED A WELL, INCLUDING AN EXEMPT WELL AS DEFINED IN § 45-402, TO SUPPLY WATER FOR A NEW RESIDENTIAL USE UNLESS THE DIRECTOR HAS DETERMINED THAT THERE IS AN ASSURED WATER SUPPLY FOR THE PROPOSED RESIDENTIAL USE.

I. THE STATE OF ARIZONA AND THE DIRECTOR AND DEPARTMENT SHALL NOT BE LIABLE FOR ANY REPORT, DESIGNATION, OR EVALUATION PREPARED IN GOOD FAITH PURSUANT TO THIS SECTION.

Renumber following subsections to conform and add a new definition to renumbered subsection K to read:

2. "NEW RESIDENTIAL USE" MEANS A USE RELATED TO THE SUPPLY, SERVICE AND ACTIVITIES OF HOUSEHOLDS AND PRIVATE RESIDENCES THAT WAS NOT IN EXISTENCE AS OF _____ (effective date of legislation).

§ 45-596 Notice of intention to drill

A. In an area not subject to active management, a person may not drill or cause to be drilled any well or deepen an existing well without first filing notice of intention to drill pursuant to subsection C of this section or obtaining a permit pursuant to section 45-834.01.

B. In an active management area, a person may not drill or cause to be drilled an exempt well, a replacement well in approximately the same location or any other well for which a permit is not required under this article, article 7 of this chapter or section 45-834.01 or deepen an existing well without first filing a notice of intention to drill pursuant to subsection C of this section.

C. A notice of intention to drill shall be filed with the director on a form which is prescribed and furnished by the director and which shall include:

1. The name and mailing address of the person filing the notice.

2. The legal description of the land upon which the well is proposed to be drilled and the name and mailing address of the owner of the land.

3. The legal description of the location of the well on the land.

4. The depth, diameter and type of casing of the proposed well.

5. Such legal description of the land upon which the groundwater is proposed to be used as may be required by the director to administer this chapter.

6. When construction is to begin.

7. The proposed uses to which the groundwater will be applied.

8. The name and well driller's license number of the well driller who is to construct the well.

9. The design pumping capacity of the well.

10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.

11. If the proposed well would pump Colorado river water, proof that the director determines to be satisfactory that the person who files the notice has the legal right to use Colorado river water. This paragraph does not apply to a proposed well that will have a pump with a maximum capacity of not more than thirty-five gallons per minute and that will be used

for the supply, service and activities of households and private residences, including the application of water to less than two acres of land to produce plants or parts of plants for sale or human consumption or for use as feed for livestock, range livestock or poultry, as those terms are defined in section 3-1201.

12. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10, and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by section 32-1121.

13. If any water from the proposed well will be used for domestic purposes as defined in section 45-454, evidence of compliance with the requirements of subsection F of this section.

14. IF ANY WATER FROM THE PROPOSED WELL WILL BE USED FOR A NEW RESIDENTIAL USE AS DEFINED IN SECTION 45-108 AND 45-576, EVIDENCE OF COMPLIANCE WITH THE REQUIREMENTS OF SECTION 45-108 OR 45-576.

15. Such other information as the director may require.

D. Upon receiving a notice of intention to drill, the director shall endorse on the notice the date of its receipt. The director shall determine whether all information that is required has been submitted and, if applicable, whether the requirements of subsection C, paragraphs 11, 12 and 13 of this section have been met. If so, within fifteen days of receipt of the notice, the director shall record the notice, mail a drilling card that authorizes the drilling of the well to the well driller identified in the notice and mail written notice of the issuance of the drilling card to the person filing the notice of intention to drill at the address stated in the notice. Upon receipt of the drilling card, the well driller may proceed to drill or deepen the well as described in the notice of intention to drill. If the director determines that the required information has not been submitted or, if applicable, that the requirements of subsection C, paragraphs 11, 12 and 13 of this section have not been met, the director shall mail a statement of the determination to the person giving the notice to the address stated in the notice, and the person giving the notice may not proceed to drill or deepen the well.

E. The well shall be completed within one year after the date of the notice. If the well is not completed within one year, the person shall file a new notice before proceeding with further construction.

F. If any water from a proposed well will be used for domestic purposes as defined in section 45-454 on a parcel of land of five or fewer acres, the applicant shall submit a well site plan of the property with the notice of intention to drill. The site plan shall:

1. Include the county assessor's parcel identification number.

2. Show the proposed well location and the location of any septic tank or sewer system that is either located on the property or within one hundred feet of the proposed well site.

3. Show written approval by the county health authority that controls the installation of septic tanks or sewer systems in the county, or by the local health authority in areas where the authority to control installation of septic tanks or sewer systems has been delegated to a local authority. In areas where there is no local or county authority that controls the installation of septic tanks or sewer systems, the applicant shall apply for approval directly to the department of water resources.

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed well location complies with this title, title 49 and with local requirements, it shall endorse the site plan and the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title, title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the

well from being drilled in accordance with this title, title 49 or local requirements, the property owner may apply for a variance. The property owner shall make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require that a particular variance shall include certification by a registered professional engineer or geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

H. If a well that was originally drilled as an exploration well, a monitor well or a piezometer well or for any use other than domestic use is later proposed to be converted to use for domestic purposes as defined in section 45-454, the well owner shall file a notice of intention to drill and shall comply with this section before the well is converted and any water from that well is used for domestic purposes.